United Nations ST/IC/2016/26

Secretariat 19 September 2016

Information circular*

To: Members of the staff

From: The Under-Secretary-General for Management

Subject: **Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour, 1 July 2015 to 30 June 2016**

1. The purpose of the present circular[1] is to continue to inform staff members of the practice of the Secretary-General in exercising his authority in disciplinary matters under article X of the Staff Regulations of the United Nations, and to implement paragraph 17 of resolution 59/287, in which the General Assembly requested the Secretary-General to ensure that all staff of the Organization are informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including any legal action, with due regard for the protection of the privacy of the staff members concerned. Reference is also made to section 6.6 of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) and the requirement to provide information regarding disciplinary cases regarding prohibited conduct as defined in ST/SGB/2008/5. This circular covers the period from 1 July 2015 to 30 June 2016.

2. A broad overview of the administrative machinery in disciplinary matters is provided in section I below. Section II contains a summary of the cases in which one or more disciplinary measures were imposed by the Secretary-General on Secretariat staff members during the reporting period. Section III provides information on the practice of the Secretary-General in cases of possible criminal behaviour.

* The present circular is in effect until further notice.

[1] Previous circulars covering the period from January 2000 to June 2014 were issued as ST/IC/2002/25, ST/IC/2004/28, ST/IC/2005/51, ST/IC/2006/48, ST/IC/2007/47, ST/IC/2008/41, ST/IC/2009/30, ST/IC/2010/26, ST/IC/2011/20, ST/IC/2012/19, ST/IC/2013/29, ST/IC/2014/26 and ST/IC/2015/22.

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I. Overview of the administrative machinery with respect to disciplinary matters

A. Legislative framework governing the conduct of staff members

3. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity".

4. Article I of the Staff Regulations and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values (see, in particular, staff regulation 1.2 and staff rule 1.2).

B. Misconduct

5. Staff regulation 10.1 (a) provides that "the Secretary-General may impose disciplinary measures on staff members who engage in misconduct". Staff rule 10.1 (a) provides that the "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct". Additionally, staff rule 10.1 (c) provides that "the decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority". Within those parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures. The administrative instruction on revised disciplinary measures and procedures (ST/AI/371 and Amend.1)[2] provides further examples of conduct for which disciplinary measures may be imposed. A new administrative instruction on investigations and the disciplinary process was discussed at the annual meeting of the Staff-Management Committee, held in April 2016, and sent for broader consultation in June 2016. It is currently anticipated that a new policy will be promulgated during the last quarter of 2016.

C. Procedural fairness

6. Where the head of office or other responsible officer believes, following an investigation, that misconduct may have occurred, he or she refers the matter to the Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case. Depending on the subject matter and complexity of the report of misconduct, the investigation may have been

[2] See also ST/SGB/2008/5.

undertaken by the head of office or his or her designees, or by the Office of Internal Oversight Services, at its own initiative or at the request of a head of office.

7. If the Assistant Secretary-General for Human Resources Management decides to pursue the matter and thereby initiates the disciplinary process, the staff member is notified in writing of the allegations of misconduct and is informed of his or her opportunity to comment on the allegations and of the right to seek the assistance of counsel in his or her defence through the Office of Staff Legal Assistance or from outside counsel at his or her own expense. The staff member is given a reasonable opportunity to respond to the allegations of misconduct. In the light of the comments provided by the staff member and on the basis of the entire dossier, the Assistant Secretary-General decides whether to close the case, with or without administrative action, or to recommend the imposition of one or more disciplinary measures. In the latter case, the Under-Secretary-General for Management decides whether to impose one or more of the disciplinary measures provided for in staff rule 10.2 (a). In some cases, the first step taken with respect to a matter referred to the Office of Human Resources Management is not to initiate the disciplinary process, but rather to request the staff member to provide comments. The request for comments is made in compliance with staff rule 10.2 (c) if the issuance of a reprimand is being contemplated and to assist the Office in deciding whether to initiate the disciplinary process.

8. Staff rule 10.4 (a) provides that, at any time after a report of possible misconduct, pending an investigation until the completion of the disciplinary process, a staff member may be placed on administrative leave by the appropriate official.[3]

9. In accordance with staff rule 10.3 (c), a staff member against whom a disciplinary measure has been imposed may submit an application to the Dispute Tribunal challenging the imposition of the measure in accordance with chapter XI of the Staff Rules. Judgments of the Dispute and Appeals Tribunals relating to disciplinary cases can be found on the website of the Office of Administration of Justice (www.un.org/en/oaj).

D. Disciplinary measures

10. Staff rule 10.2 (a) provides that disciplinary measures may take one or more of the following forms (i.e., more than one measure may be imposed in each case):

[3] In January 2013, the Assistant Secretary-General for Human Resources Management delegated to the Under-Secretary-General for Field Support, on a pilot basis, the authority to place field mission staff members on administrative leave with pay. The delegation of authority on a pilot basis was reconfirmed in September 2014. Guidelines for placement of staff on administrative leave with pay pending investigation and under the disciplinary process can be found in the Human Resources Handbook (https://hr.un.org/handbook), under the category "Administration of justice and disciplinary matters". The draft administrative instruction on investigations and the disciplinary process (see para. 5 above), which is anticipated to be promulgated during the last quarter of 2016, will reflect this delegation of authority. A management working group has begun to further discuss the delegation of authority to the Under-Secretary-General for Field Support for field staff, as envisaged in paragraph 208 (d) of the report of the Secretary-General on the administration of justice at the United Nations (A/66/275).

(a) Written censure;

(b) Loss of one or more steps in grade;

(c) Deferment, for a specified period, of eligibility for salary increment;

(d) Suspension without pay for a specified period;

(e) Fine;

(f) Deferment, for a specified period, of eligibility for consideration for promotion;

(g) Demotion, with deferment, for a specified period, of eligibility for consideration for promotion;

(h) Separation from service, with notice or compensation in lieu of notice, and with or without termination indemnity;

(i) Dismissal.

11. In determining the appropriate measure, each case is decided on its own merits, taking into account the particulars of the case, including aggravating and mitigating circumstances. Additionally, in accordance with staff rule 10.3 (b), disciplinary measures imposed must be proportionate to the nature and the gravity of the misconduct involved. Given the thoroughness of the review involved to assess the unique facts and features of each case, the specific sanction that applies to a specific type of misconduct cannot be determined in advance or applied across the board.

E. Other measures

12. Written or oral reprimands, the recovery of moneys owed to the Organization and administrative leave with or without pay are not considered disciplinary measures. Reprimands are administrative measures that are important for upholding standards of proper conduct and promoting accountability. Warnings or letters of caution are managerial measures directed at fostering awareness of the proper standards of conduct. In addition, where conduct that may amount to misconduct has an impact on performance, the issue may be addressed in the context of performance management. That may include training, counselling, the non-renewal of a contract or the termination of an appointment.

II. Summary of cases in which disciplinary measures were imposed during the period from 1 July 2015 to 30 June 2016

13. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below indicating the nature of the misconduct and the disciplinary measure or measures imposed by the Secretary-General. The functional title of the staff members or other particulars relating thereto are provided only when they played a role in determining the measures to be taken. Conduct issues that were dealt with by means other than disciplinary measures are not listed.

14. As noted above, both aggravating and mitigating circumstances may be taken into account in determining a sanction, and these vary according to the unique facts and circumstances of a case. Examples of possible aggravating circumstances are the repetition of acts of misconduct, the intent to derive personal benefit and the degree of harm resulting from the misconduct. Examples of possible mitigating circumstances are sincere remorse and the voluntary disclosure of the acts of misconduct early in the process.

15. Not every case brought to the attention of the Secretary-General indicating possible misconduct results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is insufficient evidence to pursue a matter as a disciplinary case, or when a staff member provides a satisfactory explanation in response to the formal allegations of misconduct, the case is closed. Cases will also typically be closed when a staff member retires or otherwise separates from the Organization before an investigation or the disciplinary process is concluded, unless continuation is in the interest of the Organization. In the vast majority of cases involving former staff members, a record is made and placed in the former staff member's official status file so that the matter can be further considered if and when the staff member rejoins the Organization. In that regard, section 3.9 of the administrative instruction on the administration of fixed-term appointments (ST/AI/2013/1) provides that a former staff member will be ineligible for re-employment following resignation during an investigation of misconduct or institution of a disciplinary process, unless the former staff member agrees to cooperate with an ongoing investigation or disciplinary process until its conclusion. Where relevant, that provision is noted in records placed in official status files.

A. Abuse of authority, harassment and discrimination

16. A staff member was found to have engaged in conduct that constituted harassment.

Disposition: censure.

B. Theft and misappropriation

17. A staff member participated in the taking, without authorization, of two sea containers that contained prefabricated building modules.

Disposition: dismissal.

18. A staff member performing security functions took, without authorization, a bottle of wine belonging to a third party that had been entrusted to security staff for safekeeping.

Disposition: dismissal.

19. A staff member participated in the taking, without authorization, of 96 sheets of corrugated metal belonging to the Organization. There were mitigating circumstances, including the staff member's early admission of the conduct.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity. Recovery of $260.30 was made from the staff member.

20. A staff member attempted to remove, without authorization, a generator part belonging to the Organization from a United Nations compound.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

21. A staff member took, without authorization, fuel belonging to the Organization and failed to report that other staff members also took fuel belonging to the Organization. There were mitigating circumstances, including the staff member's early admission of the conduct.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity. An amount equivalent to the value of 1,400 litres of fuel was recovered from the staff member.

22. A staff member took, without authorization, construction material belonging to the Organization. There were mitigating circumstances, including a partial return of the United Nations property.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

23. Two staff members participated in the taking, without authorization, of electrical cable belonging to the Organization. There were mitigating circumstances, including the staff members' early admission of the conduct.

Dispositions: separations from service, with compensation in lieu of notices and without termination indemnities. A sum equivalent to the value of 91 metres of electrical cable ($1,691.69) was recovered from the staff members.

24. A staff member performing security functions participated in an attempt to take, without authorization, building materials belonging to the Organization and was reckless or grossly negligent in the execution of duties.

Disposition: dismissal.

25. A staff member participated in the unauthorized taking of mattresses that belonged to the Organization. There were mitigating circumstances, including the staff member's early admission of the conduct.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

26. A staff member knowingly failed to follow instructions relating to the security of United Nations vehicles.

Disposition: written censure and recovery of $1,828.35, which is a sum equivalent to 25 per cent of the financial loss suffered by the Organization.

27. A staff member facilitated the sale of refrigeration units that were taken, without authorization, from the Organization and received payment for assistance

with locating a buyer. There were mitigating circumstances, including the staff member's early admission of the conduct.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

28. A staff member performing security functions took, without authorization, rolls of concertina wire belonging to the Organization for the staff member's personal use. The rolls of concertina wire were recovered.

Disposition: dismissal.

29. Two staff members took, without authorization, 10 refrigeration units belonging to the Organization and arranged to sell some of those units.

Disposition: dismissals.

C. Misrepresentation and false certification

30. A staff member falsely reported, in a job application to the Organization, the familial relationship of the staff member with another existing staff member. There were mitigating circumstances, including remorse.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

31. A staff member took a written test as a candidate for a vacancy, which the same staff member was charged with administering, with prior knowledge of the contents of the test acquired by having received a copy of it in advance.

Disposition: demotion by one grade with deferment, for two years, of eligibility for consideration for promotion.

32. A staff member sent a test to another staff member, in anticipation that the receiving staff member would review it prior to taking an examination for a recruitment exercise.

Disposition: fine of one month's net base salary and written censure.

33. A staff member received and reviewed a copy of an essay question prior to sitting for an examination that contained the same question and subsequently distributed the same essay question to two staff members. There were mitigating circumstances, including the staff member's early admission of the conduct.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

34. A staff member offered to assist a person external to the Organization with securing United Nations employment in exchange for money. There were mitigating circumstances, including the staff member's early admission of the conduct.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity, and fine in an amount equivalent to one month's net base salary.

35. A staff member performing security functions misled an individual regarding assistance the staff member could provide in purchasing a vehicle through United Nations channels.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

36. A staff member submitted insurance claims that contained false information. There were mitigating circumstances, including the staff member's early admission of the conduct. No moneys were paid to the staff member with respect to the claims.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

37. A staff member falsely represented himself to prospective buyers of vehicles being sold by the Organization as being a legitimate intermediary.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

38. A staff member submitted insurance claims that contained false information. There were mitigating circumstances, including the staff member's length of service. No moneys were paid to the staff member with respect to the claims.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

39. A staff member submitted one or more education grant claims that contained false, misleading and/or inaccurate and/or incorrect information, signatures and/or stamps. The amount that the staff member received in excess of the staff member's entitlement was recovered by being offset against the staff member's legitimate education grant claims.

Disposition: dismissal.

40. A staff member falsified education grant forms by imprinting a forged stamp on the forms and affixing a forged signature. There were mitigating circumstances, including that the amount claimed by the staff member was less than the staff member would otherwise have been entitled to receive.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

41. A staff member falsely stated the staff member's educational qualifications in a job application to the Organization and provided a falsified diploma.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

42. A staff member submitted insurance claims that contained false information.

Disposition: dismissal. It was decided that the sum of $3,663, representing the amount of the false claims, would be recovered from the staff member's final entitlements.

43. In job applications to the Organization, a staff member made a false declaration as to the staff member's educational qualifications. There were

mitigating circumstances, including the staff member's early admission of the conduct.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

44. A staff member performing finance assistant functions used the staff member's office for private gain to solicit a loan from a bank and made a false declaration on a job application to the Organization by stating that the staff member had never been arrested. The fact that the arrest related to an investigation completed more than 10 years previously and subsequently closed was considered a mitigating circumstance.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

45. A staff member submitted documentation that contained false information, provided by the staff member's spouse, in support of a claim relating to medical services purportedly received by the staff member's dependents. The evidence indicated that the staff member was unaware of the false information and had no reason to suspect that the information was false. No moneys were paid to the staff member with respect to the claims.

Disposition: loss of two steps in grade and written censure.

46. A staff member misrepresented the staff member's educational qualifications and work experience on a job application to the Organization.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

47. A staff member copied portions of a personal history profile belonging to another staff member and submitted the resulting profile as the staff member's own. The personal history profile appeared to be reflective of the staff member's actual experience.

Disposition: loss of two steps in grade and written censure.

48. A staff member acted as an intermediary in the improper receipt of money in exchange for the promise of employment with the Organization from an individual contractor. The secondary role played by the staff member was considered a mitigating circumstance.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

49. A staff member created, without authorization, the staff member's attendance reports for three months and forged the signatures of other staff members in the reports before submitting them. There were mitigating circumstances, including the staff member's long service with the Organization.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

D. Unauthorized outside activities

50. Without the approval of the Secretary-General, a staff member disseminated business information relating to the lunch delivery business of the staff member's siblings to potential customers within the United Nations community using the staff member's United Nations e-mail account and permitted the staff member's domestic employee to deliver the ordered lunches.

Disposition: loss of two steps in grade and written censure.

51. A staff member provided interpretation and translation services for one or more non-United Nations organizations in exchange for remuneration without the authorization of the Secretary-General. There were mitigating circumstances, including the staff member's long service with the Organization.

Disposition: loss of two steps in grade, fine equivalent to two months' net base salary and written censure.

52. A staff member became a candidate for political office in national elections, without authorization. The staff member had been previously cautioned against engaging in such conduct and agreed not to become a candidate. The fact that the staff member breached the agreement, demonstrating a clear disregard for the Staff Regulations and Rules of the Organization, operated as an aggravating circumstance.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

53. A staff member was employed by a quasi-governmental organization while concurrently being employed by the United Nations, without the authorization of the Secretary-General.

Disposition: loss of two steps in grade, deferment, for two years, of eligibility for consideration for promotion and written censure.

E. Assault and abusive conduct

54. A staff member verbally abused and physically assaulted a non-staff member at the entrance of a United Nations compound. That the incident took place while the victim was exercising security guard functions was considered an aggravating circumstance.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

55. A staff member physically assaulted a third party, resulting in the person's hospitalization.

Disposition: dismissal.

56. A staff member, while off duty, assaulted and injured with a knife a non-staff member, in violation of local law.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

57. A staff member verbally abused and threw a large rock at another staff member and the staff member's supervisor and later that day pushed the supervisor. The staff member also used a key to self-inflict facial injuries and claimed that the supervisor had caused them.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

58. Two staff members engaged in a physical altercation with each other. The staff members' years of service to the Organization were found to constitute mitigating circumstances.

Disposition: separations from service, with compensation in lieu of notices and without termination indemnities.

59. A staff member drove a United Nations shuttle bus under the influence of alcohol and physically assaulted another staff member. There were mitigating circumstances, including the staff member's early admission of the conduct.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

60. A staff member physically assaulted a woman who was a United Nations Volunteer and with whom the staff member had had a romantic relationship. The substantial amount of time that had passed since the incident had occurred was viewed as a mitigating circumstance.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

61. A staff member physically assaulted another staff member by hitting him in the face.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

62. A staff member threatened to damage personal property belonging to another individual inside a recreational facility of the Organization.

Disposition: loss of two steps in grade and written censure.

63. A staff member physically assaulted another staff member. There were mitigating circumstances, including the physical response of the other staff member.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

F. Violation of local laws

64. A staff member possessed ivory bangles, in violation of local laws.

Disposition: deferment, for one year, of eligibility for salary increment and written censure.

65. A judgment was issued against a staff member in which it was determined that the staff member had received stolen property, in contravention of local laws.

Disposition: dismissal.

G. Failure to honour private obligations

66. A staff member failed to honour the staff member's private legal obligations as set out in a judgment ordering the staff member to pay child support. The staff member's failure to acknowledge the debt, despite a judgment against the staff member, and the staff member's failure to make any attempt to settle the matter operated as aggravating circumstances.

Disposition: deferment, for one year, of eligibility for salary increment and written censure. The staff member was also instructed to report regularly on steps taken to meet the staff member's private legal obligation. A portion of the staff member's emoluments was also withheld, pursuant to the Secretary-General's bulletin on family and child support obligations of staff members (ST/SGB/1999/4).

H. Sexual exploitation and abuse

67. A staff member used the staff member's official laptop to access pornographic material. In addition, the staff member used the services of prostitutes. There were mitigating circumstances, including the length of time that had elapsed since the conduct came to light.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

68. A staff member engaged in sexual intercourse with two minors, in violation of the criminal laws of a Member State relating to sexual abuse, rape, attempted sexual assault and attempted facilitation of prostitution.

Disposition: dismissal and fine equivalent to three months' net base salary.

69. A staff member solicited money from and/or engaged in the sexual harassment and/or attempted sexual exploitation and abuse of persons who were either attempting to gain employment with the Organization or were working as independent contractors under the staff member's supervision.

Disposition: dismissal.

I. Misuse of United Nations property and assets

70. A staff member used a United Nations vehicle without authorization and verbally threatened another staff member.

Disposition: loss of two steps in grade and censure.

71. A staff member used United Nations property and assets for unofficial purposes to facilitate the staff member's engagement in outside activities.

Disposition: loss of two steps in grade and written censure.

72. A staff member worked, without authorization, as a designer for individuals, using the staff member's United Nations computer and e-mail account, and received remuneration from some of the individuals.

Disposition: loss of one step in grade and written censure.

73. A security officer left a firearm and ammunition unattended in a United Nations vehicle and the items were stolen. Leaving the firearm and ammunition in such circumstances directly contradicted the standard operating procedures relating to firearms.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

74. A staff member allowed a non-staff member to access the Organization's information and communications technology resources available to the staff member.

Disposition: loss of two steps in grade and written censure.

J. Other

75. A staff member sought and received payment from individual contractors in exchange for their employment, continued employment or prospective employment with a mission. There were mitigating circumstances, including the substantial amount of time that had elapsed since the matter had come to light.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

76. Two staff members performing security functions who were posted at an exit gate failed to search the contents of a United Nations vehicle, in violation of their duties, which resulted in the unauthorized removal of mattresses belonging to the Organization.

Dispositions: demotions of one grade with deferment, for two years, of eligibility for consideration for promotions.

77. A staff member failed to disclose the staff member's marital relationship with a candidate for employment within the Organization. The staff member sat on the interview panel and made recommendations with respect to that candidate.

Disposition: demotion of one grade, deferment, for two years, of eligibility for consideration for promotion and fine of three months' net base salary.

78. A staff member drove a United Nations vehicle and carried a service weapon while under the influence of alcohol. The involvement of local authorities and the fact that the staff member's conduct was in contravention of the staff member's core duties as a security guard operated as aggravating circumstances.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

III. Possible criminal behaviour

79. In its resolution 59/287, the General Assembly requested the Secretary-General to take action expeditiously in cases of proven misconduct and/or criminal behaviour and to inform Member States about the actions taken. During the reporting period, 15 cases involving credible allegations of criminal conduct by United Nations officials or experts on mission were referred to Member States.